

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2656

John Smart; Sota Foods, Inc., d/b/a King	*	
of Potatoes; John Smart &	*	
Associates, Inc.,	*	
	*	
Plaintiffs - Appellants,	*	Appeal from the United States
	*	District Court for the
v.	*	District of North Dakota.
	*	
Sunshine Potato Flakes, L.L.C.,	*	[UNPUBLISHED]
	*	
Defendant - Appellee.	*	

Submitted: May 16, 2001

Filed: May 22, 2001

Before LOKEN, JOHN R. GIBSON, and FAGG, Circuit Judges.

PER CURIAM.

In August 1997, John Smart, John Smart & Associates, Inc., and Sunshine Potato Flakes, L.L.C., entered into an Exclusive Distributor Agreement containing a broad arbitration clause. The contractual relationship ended in January 2000, and arbitration proceedings commenced in which breach-of-contract claims and counterclaims have been asserted. John Smart and two of his companies filed this diversity action against Sunshine, alleging that a post-termination letter from Sunshine's plant manager to

customers was defamatory. Responding to a motion by Sunshine, the district court¹ entered an order staying the lawsuit and directing the parties to arbitrate this dispute. The Smart plaintiffs appeal, arguing their defamation claims are not arbitrable.

Absent a district court certification under 28 U.S.C. § 1292(b) -- and there was no such certification in this case -- an interlocutory order staying an action and directing arbitration is not appealable. See 9 U.S.C. § 16(b); Lebanon Chem. Corp. v. United Farmers Plant Food, Inc., 179 F.3d 1095, 1102 (8th Cir. 1999). Accordingly, the appeal is dismissed for lack of jurisdiction. Appellee's motion for an award of costs and attorneys' fees is denied.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The HONORABLE RODNEY S. WEBB, Chief Judge of the United States District Court for the District of North Dakota.